

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Martin S. Rood,

Plaintiff,

vs.

Arthur F. Nelson; Don Foster Scoggins; Jack
P. Gillespie; and Appraisers of Las Vegas,

Defendants.

Case No.: 2:12-cv-00893-GMN-NJK

ORDER

Pending before the Court is the Ex Parte Application for Entry of Clerk's Default (ECF No. 34), filed by Plaintiff Martin S. Rood. No opposition has been filed.

Plaintiff requests entry of default in his favor and against Defendants Arthur F. Nelson, Don Foster Scoggins, and Appraisers of Las Vegas, pursuant to Rule 55 of the Federal Rules of Civil Procedure and Local Rule 77-1. (ECF No. 34.) In support of the motion, Plaintiff attaches an Affidavit from his counsel, E. Robert Spear, and copies of the summons and affidavits of service. (Exs. 1-4 to Mot. Entry of Clerk's Def., ECF No. 34.)

Local Rule 77-1(2) provides that the Clerk may enter default for failure to plead or otherwise defend, as provided in Rule 55 of the Federal Rules of Civil Procedure. D. Nev. R. II.77-1(b). Rule 55 provides for entry of default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a).


Here, Plaintiff is correct that Defendants Nelson, Scoggins, and Appraisers of Las Vegas have failed to plead or otherwise defend in this action. However, Plaintiff has not shown that entry of default is appropriate. The affidavit and summons attached to the motion all relate to the original Complaint (ECF No. 1), and as of August 2012, the operative pleading before the

1 Court is the Amended Complaint (ECF No. 17). Therefore, the Court cannot find that entry of
2 default as to the original Complaint (ECF No. 1) is appropriate, as Plaintiff appears to request
3 in his motion. To the extent that Plaintiff can show grounds for entering default as to the
4 original Complaint (ECF No. 1), or wishes to request entry of default as to the Amended
5 Complaint (ECF No. 17), the Court will give leave to re-file a Motion for Entry of Clerk's
6 Default.

7 **IT IS HEREBY ORDERED** that the Ex Parte Application for Entry of Clerk's Default
8 Against Defendants (ECF No. 34) is **DENIED**.

9 **DATED** this 15th day of August, 2013.

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Gloria M. Navarro
United States District Judge